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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B01
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Date:
February 21, 2008

Legend:

Trust =

Trust A =

Trust B =

A =

B =

D1 =

D2 =

D3 =

State =

Judgment =

Order =

a =

b =

Dear

This letter responds to a letter dated September 25, 2007, submitted on behalf of Trust by Trust's authorized representative, requesting rulings concerning the division of Trust into two separate trusts, Trust A and Trust B.

According to the information submitted, on D1, A and B, a husband and wife, established, under the laws of State, Trust, a charitable remainder unitrust, described in § 664(d)(2) of the Internal Revenue Code.

Article 2.1 of Trust provides the following.

In each taxable year of Trust, the trustee shall pay to A and B in equal shares during their lifetimes, a Unitrust Amount equal to the lesser of: (a) the trust income for the taxable year, as defined in § 643(b) of the Code and the regulations thereunder and (b) a percent of the net fair market value of the trust assets valued as of the first business day of such taxable year of the trust. The Unitrust Amount for any year shall also include any amount of the trust income for such year that is in excess of the amount required to be distributed under (b) (above) to the extent that the aggregate of the amounts paid in prior years was less than the aggregate of the amounts computed as a percent of the net fair market value of the trust assets on the valuation date. Upon the death of the first of A and B to die, the survivor shall be entitled to the entire Unitrust Amount.

Trust provides further that upon the death of the survivor of A and B, the trustee shall distribute all of the principal and income of the trust (other than any amount due either of A and B or their estates under the trust agreement) to any one or more charitable organizations that, at the time income or principal is to be distributed to it, is described in each of §§ 170(b)(1)(A), 170(c), 2055(a), and 2522(a) of the Code.

On D2, A and B divorced under Judgment. Under the terms of Order dated D3, Trust's assets will be divided in equal shares to Trust A and Trust B, both of which are intended to qualify as charitable remainder unitrusts under § 664(d)(2). A is the initial non-charitable beneficiary of Trust A and B is the initial non-charitable beneficiary of Trust B. During his lifetime, A will possess and retain the sole power to designate the

charitable remainder beneficiary or beneficiaries of Trust A. During her lifetime, B will possess and retain the sole power to designate the charitable remainder beneficiary or beneficiaries of Trust B. A is the successor non-charitable beneficiary of Trust B if he survives B, and B is the successor non-charitable beneficiary of Trust A if she survives A. Upon the death of the survivor of A and B, the remainder of Trust A will pass to the named charitable beneficiary or beneficiaries of Trust A and the remainder of Trust B will pass to the named charitable beneficiary or beneficiaries of Trust B.

The terms of Trust A and Trust B will remain the same as the terms of Trust, except the following modifications.

If the trustee of Trust A shall cease to act as trustee, then its successor shall be such one or more independent trustees or corporate trustees as A shall appoint with respect to Trust A. If the trustee of Trust B shall cease to act as trustee, then its successor shall be such one or more independent trustees or corporate trustees as B shall appoint with respect to Trust B. If no such designation is made within b days of a vacancy, then a majority of the then living adult issue of the former marriage of A and B may designate a successor independent trustee or corporate trustee.

A shall retain the removal power with respect to Trust A, but shall relinquish any removal power A may otherwise have over Trust B. B shall retain the removal power with respect to Trust B, but shall relinquish any removal power A may otherwise have over Trust A. A shall retain the right to appoint a successor independent trustee or corporate trustee to replace any trustee of Trust A who resigns or is so removed and B shall retain the right to appoint a successor independent trustee or corporate trustee to replace any trustee of Trust B who resigns or is so removed.

A's power to remove and replace an independent trustee shall only apply to Trust A and B's power to remove and replace an independent trustee shall only apply to Trust B.

A may only designate, in a writing delivered to the trustee of Trust A, which qualified charity or qualified charities A selects for Trust A. B may only designate, in a writing delivered to the trustee of Trust B, which qualified charity or qualified charities B selects for Trust B. Upon the death of either A or B, the survivor shall have no right to change the designation of the qualified charity for the trust of the deceased. For the designation to be effective, the designation need only be signed by A with respect to Trust A and the designation need only be signed by B with respect to Trust B.

Ruling 1

Section 664(c) provides, generally, that a charitable remainder unitrust shall be exempt from federal income tax.

Section 664(d)(2) provides that a charitable remainder unitrust is a trust (A) from which a fixed percentage (which is not less than 5 percent nor more than 50 percent) of the net fair market value of its assets, valued annually, is to be paid, not less often than annually, to one or more persons (at least one of which is not an organization described in § 170(c) and, in the case of individuals, only to an individual who is living at the time of the creation of the trust) for a term of years (not in excess of 20 years) or for the life or lives of such individual or individuals, (B) from which no amount other than the payments described in § 664(d)(2)(A) and other than qualified gratuitous transfers described in § 664(d)(2)(C) may be paid to or for the use of any person other than an organization described in § 170(c), (C) following the termination of the payments described in § 664(d)(2)(A), the remainder interest in the trust is to be transferred to, or for the use of, an organization described in § 170(c) or is to be retained by the trust for such a use or, to the extent the remainder interest is in qualified employer securities (as defined in § 664(g)(4)), all or part of such securities are to be transferred to an employee stock ownership plan (as defined in § 4975(e)(7)) in a qualified gratuitous transfer (as defined by § 664(g)), and (D) with respect to each contribution of property to the trust, the value (determined under § 7520) of such remainder interest in such property is at least 10 percent of the net fair market value of such property as of the date such property is contributed to the trust.

Section 664(d)(3) provides that notwithstanding the provisions of § 664(d)(2)(A) and (B), the trust instrument may provide that the trustee shall pay the income beneficiary for any year – (A) the amount of the trust income, if such amount is less than the amount required to be distributed under § 664(d)(2)(A), and (B) any amount of the net trust income which is in excess of the amount required to be distributed under § 664(d)(2)(A), to the extent that (by reason of § 664(d)(3)(A)) the aggregate of the amounts paid in prior years was less than the aggregate of such required amounts.

Therefore, based solely on the facts and the representations submitted, the division of Trust into Trust A and Trust B did not cause Trust, Trust A or Trust B to fail to qualify as charitable remainder trusts under § 664.

Ruling 2

Section 61(a)(3) provides that gross income includes gains derived from dealings in property.

Section 1001(a) provides that the gain from the sale or other disposition of property shall be the excess of the amount realized over the adjusted basis provided in

§ 1011 for determining gain, and the loss shall be the excess of the adjusted basis provided in § 1011 for determining loss over the amount realized.

Section 1001(b) provides that the amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received. Under § 1001(c) the entire amount of gain or loss on the sale or exchange of property shall be recognized, except as otherwise provided.

Section 1.1001-1(a) of the Income Tax Regulations provides that except as otherwise provided in subtitle A of the Code, the gain or loss realized from the exchange of property for other property differing materially either in kind or in extent, is treated as income or as loss sustained.

An exchange of property results in the realization of gain or loss under § 1001 if the properties exchanged are materially different. *Cottage Savings Association v. Commissioner*, 499 U.S. 554 (1991). A material difference exists when the exchanged properties embody legal entitlements different in kind or extent or if they confer different rights and powers. *Id.* at 565.

A partition of jointly owned property is not a sale or other disposition of property if the co-owners of the joint property sever their joint interests but do not acquire a new or additional interest as a result of the transaction. Thus, neither gain nor loss is realized on a partition. See Rev. Rul. 56-437, 1956-2 C.B. 507.

Here, each of A and B currently receives 50 percent of annual trust payments in an amount equal to the lesser of (i) the trust income for the year, or (ii) a percent of the net fair market value of the trust assets, and have the right to designate the charitable remainder beneficiaries. Under the proposed transaction, Trust will be divided pro rata into two equal charitable remainder unitrusts, Trust A and Trust B, with 50% of each asset going to Trust A, and 50% of each asset going to Trust B. A will be the Unitrust Amount beneficiary of Trust A and will have the sole right to designate the charitable remainder beneficiaries of Trust A, and B will be the Unitrust Amount beneficiary of Trust B and have the sole right to designate the charitable remainder beneficiaries of Trust B. A and B each will receive payments in an amount equal to the lesser of (i) the trust income from his or her respective trust for the year, or (ii) a percent of the net fair market value of his or her respective trust. Accordingly, it is our conclusion that the division of the assets in Trust and the distribution of those assets to Trust A and Trust B will be equal in kind and extent, and will not give rise to gain or loss under §§ 61(a)(3) and 1001. Thus, the division of Trust will not result in taxable income to Trust, Trust A, Trust B, or the beneficiaries.

Ruling 3

Section 1223(2) provides that, in determining the period for which the taxpayer has held property however acquired, there shall be included the period for which such property was held by any other person, if under chapter 1 of the Code such property has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in the taxpayer's hands as it would have in the hands of such other person. See also § 1.1223-1(b)

Section 1015(a) provides, that if property was acquired by gift after December 31, 1920, the basis shall be the same as it would be in the hands of the donor or the last preceding owner by whom it was not acquired by gift, except that if such basis (adjusted for the period before the date of the gift as provided in § 1016) is greater than the fair market value of the property at the time of the gift, then for the purpose of determining loss the basis shall be such fair market value.

Section 1015(b) provides that, if the property was acquired after December 31, 1920, by a transfer in trust (other than by a transfer in trust by a gift, bequest, or devise), the basis shall be the same as it would be in the hands of the grantor, increased in the amount of gain or decreased in the amount of loss recognized to the grantor on the transfer.

Therefore, based on the information provided and the representations made, Trust A and Trust B determine their basis in the assets by reference to the basis of the assets in the hands of Trust under § 1015(a) or (b), and the holding periods of the assets held by Trust A and Trust B include the period for which the assets were held by Trust.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts of the transaction described above under any other provision of the Code. We express no opinion on whether Trust otherwise qualified as a charitable remainder trust under § 664 or whether Trust A and Trust B each otherwise qualify as charitable remainder trusts under § 664.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to Trust's authorized representative.

Sincerely,

/s/

Audrey W. Ellis
Senior Counsel, Branch 1
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2):
Copy of this letter
Copy for § 6110 purposes

cc: